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Supreme Court, U.S.

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No. 87-1291

In the Supreme Court of the United States

OCTOBER TERM, 1987

STEPHEN S. STOKWITZ, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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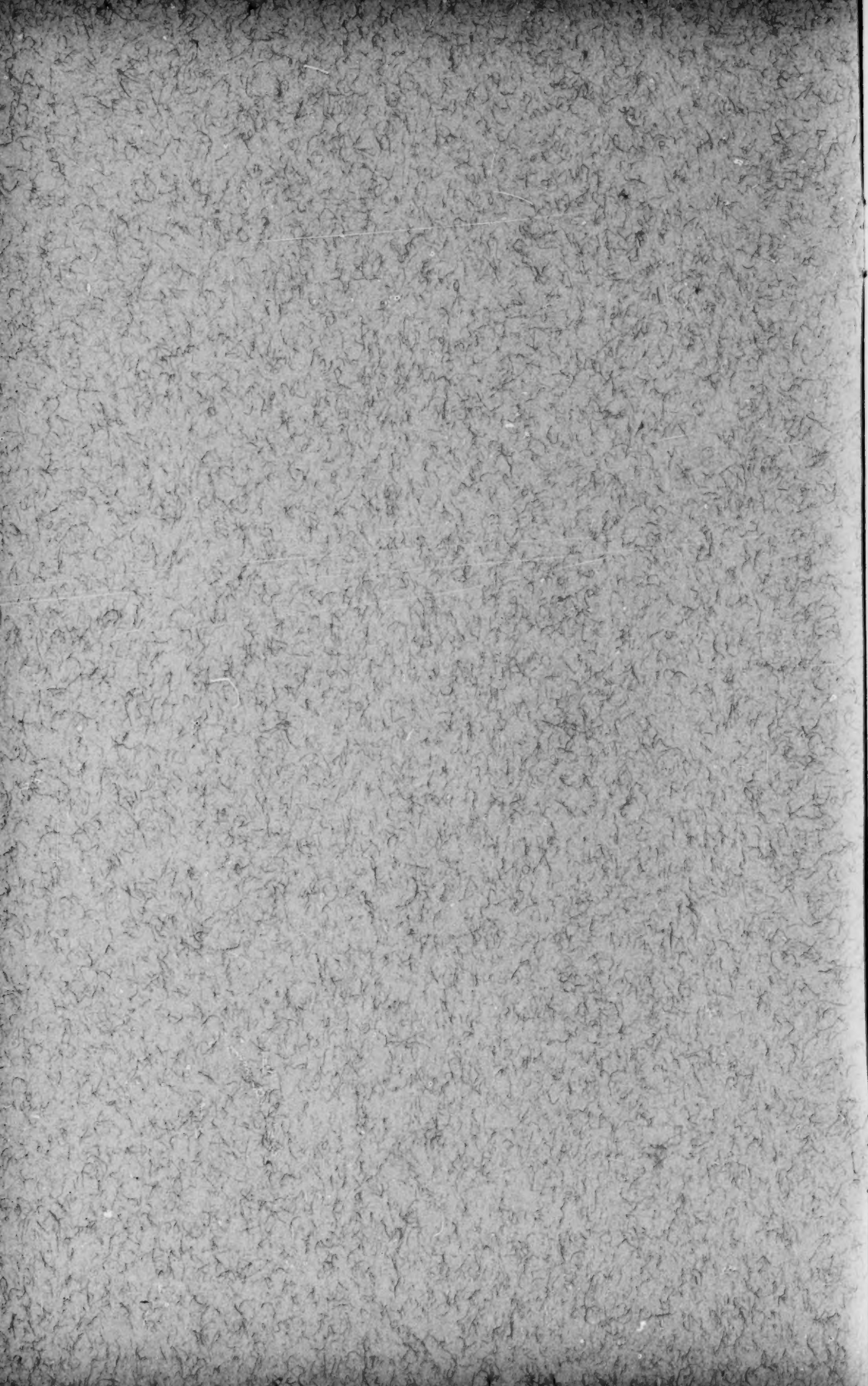


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Petitioner contends that disclosure to other government employees of copies of his federal tax returns that were seized by Navy employees in the course of a search of his workplace violated Section 6103 of the Internal Revenue Code.¹

1. Petitioner was employed by the United States Navy as a civilian attorney at the Naval Ocean Systems Center (NOSC), a high-security military complex for weapons and communications research and development. Acting on allegations of misconduct made by petitioner's secretary and his assistant, his supervisor requested an inquiry by the Naval Investigative Service (NIS). Petitioner was informed of the investigation, and he was required to surrender his access badge and to leave NOSC property. Shortly thereafter, petitioner's supervisor, his secretary,

¹ Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

his assistant, and another NOSC employee, acting without a warrant or prior authorization, searched petitioner's office and his briefcase. They seized several items, including petitioner's copies of his federal and state personal income tax returns for 1982 and 1983 and some other tax-related information. The copies of the returns and the tax-related information were reviewed by a NOSC employee and disclosed to various NIS agents and other Navy employees, and petitioner was questioned about their contents. His employment was terminated the next day. Pet. App. A2.

2. a. Petitioner brought this suit in the United States District Court for the Southern District of California seeking damages under Section 7431 of the Code, alleging wrongful disclosure of his tax returns and return information in violation of Section 6103 of the Code.² The district court granted the government's motion for summary judgment, ruling that petitioner had failed to state a claim upon which relief could be granted (Pet. App. B1-B6). The court held that the materials seized from petitioner did not fall within the definition of "return" or "return information" in Section 6103. The court explained that Section 6103 covers only returns "filed with the Secretary" (§ 6103(b)(1)) and return information "received by, recorded by, prepared by, furnished to, or collected by the Secretary" (§ 6103(B)(2)(A)). The court concluded that "[t]he prohibition in [S]ection 6103 is directed at those government officers and employees who obtain returns and return information as a result of these materials being filed by or on behalf of the taxpayer, or received by, furnished to, or collected by the Secretary" (Pet. App. B5).

² Petitioner also brought some other lawsuits, including a *Bivens* action (*Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)), seeking damages and injunctive relief under other legal theories. Pet. App. A2, B1-B2.

Therefore, because the documents and information were not furnished to the IRS, but were obtained by the Navy directly from petitioner through a search of his office, Section 7431 was inapplicable.

b. The court of appeals affirmed (Pet. App. A1-A10). The court ruled that "Section 6103 establishes a comprehensive scheme for controlling the release *by the IRS* of information received from taxpayers to discrete identified parties, subject to specified conditions" (Pet. App. A5 (footnote omitted; emphasis in original)). The court explained that this conclusion followed from the plain language of the statute; "the statutory definitions of 'returns' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS" (*id.* at A5-A7 (citation and footnote omitted)). On the other hand, the court stated, "there is no indication in either the language of section 6103 or its legislative history that Congress intended to enact a general prohibition against public disclosure of tax information" (*id.* at A7). Accordingly, the court concluded that Sections 7431 and 6103 were inapplicable here because petitioner's returns were not obtained from the IRS (Pet. App. A10).

3. Petitioner contends that the disclosure to other government employees of the materials seized from his office violated Section 6103 of the Code. This contention was correctly rejected by both courts below. The decision of the court of appeals does not conflict with any decision of this Court or of another court of appeals. There is accordingly no reason for review by this Court.

The text of the relevant statutes clearly refutes petitioner's contention. Section 6103(a) states the general rule protecting the confidentiality of tax "returns" and "return information" against disclosure by officers or employees of the United States. Those terms are explicitly defined in

Section 6103(b). A "return" is "any tax or information return * * * which is filed with the Secretary by, on behalf of, or with respect to any person" (§ 6103(b)(1)). "Return information" is defined as various kinds of data "received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return" (§ 6103(b)(2)(A)). Section 7431, which establishes the cause of action for damages arising out of violations of Section 6103, incorporates by reference the definitions contained in Section 6103(b) (see § 7431(c)). It is clear that the materials seized from petitioner's office, including copies of his income tax returns, do not fall within these definitions because they were never filed with or furnished to the Secretary. See *Heathman v. United States District Court*, 503 F.2d 1032, 1035 (9th Cir. 1974). Accordingly, Section 6103 does not govern the circumstances under which those materials can be disclosed to other persons. Their disclosure did not violate Section 6103, and it cannot form the basis for a lawsuit under Section 7431.³

Contrary to petitioner's contention (Pet. 10-13), the policies underlying Section 6103 are fully consistent with the statutory language. Congress substantially expanded the confidentiality protections of that statute in 1976 be-

³ Petitioner attempts to avoid this difficulty by placing great stress on the fact that the confidentiality guarantee of Section 6103(a) applies to all government employees, not merely to IRS employees (see Pet. 9-10). But this language is of no assistance to petitioner. The confidentiality guarantee is limited to the material defined in Section 6103(b). Returns and return information supplied to the IRS can come into the possession of other government employees by way of the disclosures authorized under Section 6103. The recipients of that information are bound by the disclosure limitations of Section 6103, even though they are not IRS employees. But the material at issue in this case does not fall within the definitions in Section 6103(b), and hence it is not covered by the confidentiality guarantee.

cause of concern that the IRS was disseminating too freely the information that it collected from taxpayers. Congress recognized that our voluntary assessment system of taxation is dependent in large part upon taxpayer confidence that the information that they must submit to the IRS will be kept confidential, and therefore it took steps to safeguard the confidentiality of that information while still preserving the opportunity for the government to make legitimate use of it. See S. Rep. 94-938, 94th Cong., 2d Sess. 328 (1976); Staff of the Joint Comm. on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 314-315 (Joint Comm. Print 1976). The reasons for the special confidentiality guarantees of Section 6103 therefore come into play when the material has been furnished by the taxpayer to the IRS in connection with its tax collection responsibilities. No purpose would be served by applying the statute to situations like the one in this case where the material is obtained directly from the taxpayer. Indeed, the legislative history specifically noted the focus of Section 6103 on material furnished to the IRS, disclaiming any intention "to limit the right of an agency (or other party) to obtain returns or return information directly from the taxpayer through the applicable discovery procedures" (S. Rep. 94-938, *supra*, at 331). Moreover, as the court of appeals pointed out (Pet. App. A9), if petitioner's contention were accepted, Section 6103 "would become the sole means by which the government could obtain tax information legitimately." Clearly, Congress did not intend Section 6103 to have such widespread application.⁴

⁴ Petitioner's suggestion (Pet. 13-14) that allowing the decision below to stand would countenance an illegal seizure is wholly without merit. Petitioner's contention that he has a remedy in this suit under

Petitioner's assertion (Pet. 15) that the decision below conflicts with *Rodgers v. Hyatt*, 697 F.2d 899 (10th Cir. 1983), is without merit. *Rodgers* involved the legality of a disclosure by an IRS employee of information that was furnished to the IRS by local law enforcement authorities in connection with a tax investigation. It was not even disputed in *Rodgers* that this information was "return information." Rather, the dispute centered on whether the disclosure was nonetheless lawful, either because it was necessary for investigative purposes (§ 6103(k)(6)) or because the information had already become a matter of public record. While we do not agree with the Tenth Circuit's resolution of that latter issue, it is clear that there is no conflict between *Rodgers* and the decision below with respect to the definition of returns and return information.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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Section 7431 is unrelated to the allegation of an illegal seizure; petitioner's interpretation of Section 6103 would justify this lawsuit challenging the disclosure even if it were agreed that the seizure was lawful. The focus of Section 6103, after all, is upon the disclosure of material that is lawfully within the possession of the IRS. As the courts below stated (Pet. App. A3, A10, B4), petitioner's remedy if the documents were obtained by means of an illegal search and seizure is a *Bivens* suit, and he has already pursued that remedy.

